



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

Issuance Date:

200500564

November 21, 2005

Stream: **Unnamed Tributary of**

Closing Date:

Guyandotte River

December 20, 2005

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Kepler Processing Co., Inc.
P.O. Box 1530
Pineville, West Virginia 24874

LOCATION: The proposed project is located on the Pineville USGS quadrangle at latitude 37° 34'37" and longitude 81° 34'04" in an unnamed tributary of the Guyandotte River, 2.5 miles west of Pineville, Wyoming County, West Virginia, as depicted on the **attached Site Location Map**. This unnamed tributary is locally known as Wallace Cabin Branch. The location of the proposed fills are depicted on the Site Location Map. The unnamed tributary flows into Guyandotte River, a navigable (Section 10) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to expand the existing Wallace Cabin Branch fine coal refuse disposal area, which would add 18.0 acres to the WVDEP Permit EM-45 as Incidental Boundary Revision #4. The applicant's stated purpose is to provide additional storage for coal refuse from the adjacent Kepler Processing Preparation Plant. This plant processes coal from the Fire Creek, Sewell, Pocahontas 6 and Beckley coal seams. Both coarse and fine coal refuse would be placed within the expansion area as needed to operate the ongoing facility. The proposed expansion would permanently place fill material into a total of approximately 3,500 linear feet (0.45 acre) of waters of the United States (of which 100 feet is ephemeral). No wetlands were identified within the project boundary. The proposed work would expand the existing embankment fill downstream approximately 950 feet, filling approximately 2600 linear feet of jurisdictional stream. The existing fill would also expand upstream to an elevation of 1,776 feet (a.m.s.l.), filling approximately 900 linear feet of jurisdictional intermittent streams. The proposed permanent fill would effect a watershed of approximately 316 acres above the toe of the proposed fill. The existing Pond 4, located immediately downstream of the toe of the proposed embankment fill, would be used for water treatment and sediment control. Additional sediment control would be provided by a proposed Pond 1 to be constructed on the The operational life of the proposed work is estimated at 19 years. **Table A** of this public notice summarizes the proposed stream impacts.

The proposed activity is under review by the West Virginia Department of Environmental Protection (WVDEP) for possible Article 3 authorization (WVDEP Permit EM-45 as Incidental Boundary Revision #4 pursuant to Surface Mining Control and Reclamation Act of 1977) and Article 11 authorization (revision to NPDES permit WV4070401 pursuant to Section 402 of the Clean Water Act) . Details regarding the proposed project can be found in the applicant's Surface Mining Application on file at the WVDEP.

The applicant states there are no known toxic materials that would be released into the aquatic environment (below the lowest sediment control structure) because prudent construction and material handling practices would be implemented and adequate sediment control devices would be constructed and maintained.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has submitted an alternatives analysis. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

MITIGATION PLAN: The applicant has not yet submitted a conceptual Compensatory Mitigation Plan to compensate for unavoidable permanent and temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The applicant states a CMP will be provided to the Corps when completed. The applicant is evaluating mitigation sites within the same watershed and would consist of stream construction and/or habitat improvement to streams within the same watershed. If on-site mitigation is insufficient for full compensatory mitigation, the applicant will evaluate streams within adjacent watersheds as potential mitigation streams. In the event the aforementioned options are found impracticable, the applicant would offer payment into an In-Lieu Fee program (if available) for the remaining units of mitigation.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. The applicant provided no information concerning the presence of any properties which may be eligible for inclusion into the NRHP. This public notice serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia Big-Eared bat (*Corynorhinus townsendii*), may occur in this project area. The applicant's consultant has provided information that indicates the loss of habitat would be less than 17 acres. Based on this information, the Corps has determined the proposed project is not expected to threaten the continuing existence of federally listed endangered and threatened species as a result of this project.


This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, or whether the proposed work may have more than minimal impact on threatened or endangered species, we request the Service provide any additional information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

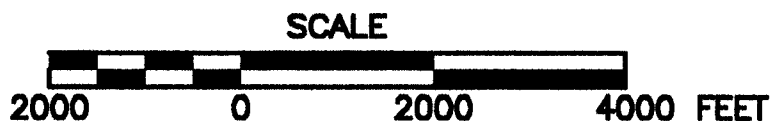
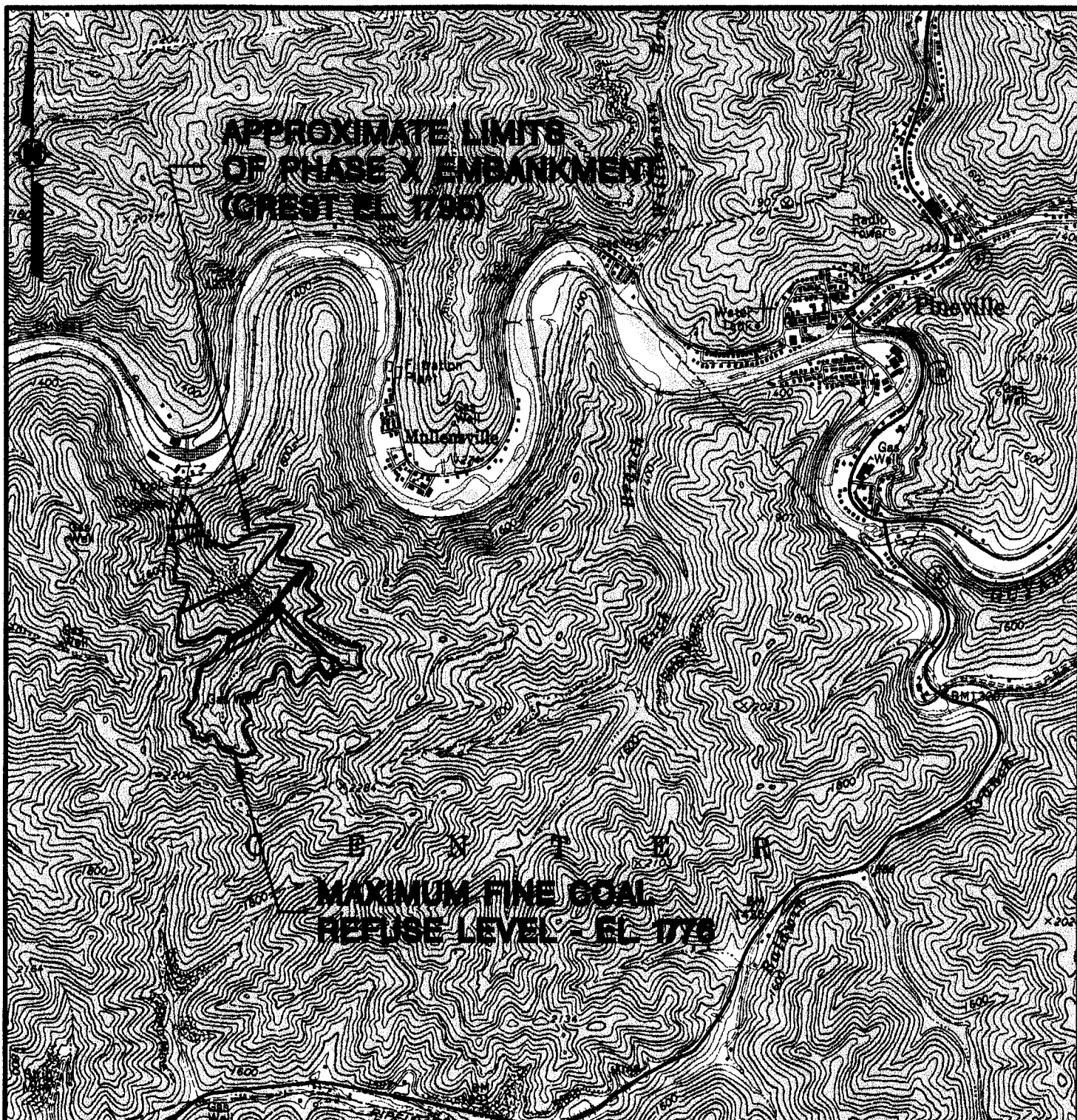
SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to

consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Richard Berkes, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Richard Berkes of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)



REFERENCE:
U.S.G.S. TOPOGRAPHY FROM 7.5 MIN.
PINEVILLE QUADRANGLE (DATED 1967
AND PHOTO REVISED 1978).

Alliance
Consulting, Inc.

Engineers

Constructors

Scientists

BECKLEY, WV
(304) 255-0491
RALEIGH, NC
(919) 661-2267

SITE LOCATION MAP
WALLACE CABIN BRANCH IMPOUNDMENT
WYOMING COUNTY, WEST VIRGINIA
PREPARED FOR
KEPLER PROCESSING COMPANY, LLC
PINEVILLE, WYOMING COUNTY, WEST VIRGINIA

DRAWN BY	TLG	04/27/05
CHECKED BY	BAH	04/29/05
APPROVED BY	BAH	04/29/05
DRAWING NUMBER		
	B03-377-A4	



CHANNEL A
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

CHANNEL A

ENTIRE CHANNEL NON-JURISDICTIONAL

APPROXIMATE LIMITS OF
FINAL EMBANKMENT

END OF JURISDICTIONAL STREAM CHANNEL 4+61

APPROXIMATE EXISTING
EMBANKMENT CONFIGURATION

CHANNEL B
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

CHANNEL B

END OF DEFINED STREAM CHANNEL 6+90

CHANNEL C
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 8+38

CHANNEL C
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 9+80

CHANNEL D
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 11+00

CHANNEL D
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 13+75

CHANNEL E

ENTIRE CHANNEL NON-JURISDICTIONAL

END OF JURISDICTIONAL STREAM CHANNEL 15+00

EXISTING FINE COAL
REFUSE LEVEL EL. 1725.5

END OF JURISDICTIONAL STREAM CHANNEL 2+00

CHANNEL E
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

CHANNEL E
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 5+55

CHANNEL F
EPHEMERAL/INTERMITTENT
TRANSITION POINT
LAT. 37° 34' 12"
LON. 81° 33' 13"
EL. 1845

END OF JURISDICTIONAL STREAM CHANNEL 1+00

Kepler Processing Company, LLC
Wallace Cabin Branch Fine Coal Refuse Disposal Facility
Permit No. EM-45

Block 22

The surface area of jurisdictional waters to be filled by the downstream expansion of the coal refuse disposal facility valley fill is 0.4466 acres and is identified below.

Description	Length	Acreage	Stream Type
Channel A1	61	0.0039	Intermittent
Channel B	600	0.0362	Intermittent/Ephemeral
Channel C	600	0.0675	Intermittent
Channel D	175	0.0045	Intermittent
Channel F	150	0.0095	Intermittent
Channel G	320	0.0272	Intermittent
Channel H	180	0.0073	Intermittent
Channel I	100	0.0017	Intermittent
Channel J	990	0.2624	Intermittent
Channel K	320	0.0264	Intermittent

TOTALS = 3,496 LF 0.446

TABLE A

Public Notice:
200500564